UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY	) San Francisco, California
	) Wednesday, August 23, 2023
Reorganized Debtors.	) 10:30 AM
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SECURITIES PLAINTIFFS' MOTION FOR THE APPLICATION OF BANKRUPTCY RULE 7023 AND THE CERTIFICATION OF A CLASS OF SECURITIES CLAIMANTS FILED BY SECURITIES LEAD PLAINTIFF AND THE PROPOSED CLASS [13865]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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SAN FRANCISCO, CALIFORNIA, WEDNESDAY, AUGUST 23, 2023, 10:30 AM

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(Call to order of the Court.)

THE CLERK: Calling the matter of PG&E Corporation. And I'll bring counsel into the courtroom now, Your Honor.

THE COURT: Thank you. All right. Why don't you make your appearing when you come on? Mr. Slack, good morning.

MR. SLACK: Good morning, Your Honor. Richard Slack from Weil, Gotshal & Manges for reorganize debtors.

THE COURT: Mr. Ritholtz?

MR. RITHOLTZ: Good morning, Your Honor. Jeffrey Ritholtz for the claimants.

THE COURT: Ms. DiCicco, you're up next.

MS. DICICCO: Good afternoon -- or good morning, Your Honor. Susan DiCicco from Morgan Lewis for the Oregon claims.

THE COURT: All right. Is Mr. Etkin signing in, Ms. Parada?

THE CLERK: I will bring him in now, Your Honor.

THE COURT: All right. Ms. Dasaro?

MS. DASARO: Good morning, Your Honor. Stacy Dasaro for MML Advisers, investment advisor to the MassMutual funds.

THE COURT: I think -- there we go. There's Mr. Etkin. Good morning, Mr. Etkin.

MR. ETKIN: Good morning, Your Honor. Michael Etkin, Lowenstein Sandler, for PERA. I would also ask Your Honor

that -- I think Mr. Dubbs is on.

THE COURT: I'm sorry. Who?

MR. ETKIN: Mr. Dubbs from Labaton.

THE COURT: Yes. Well, he needs to check in.

MR. ETKIN: Hopefully he's checked in in there and Ms. Parada can bring him in as a --

THE COURT: Okay.

MR. ETKIN: Because he's --

THE COURT: You're going to make the principal argument, or is he?

MR. ETKIN: He is, Your Honor.

THE COURT: Oh, okay. All right.

THE CLERK: I don't see a Mr. Dubbs that signed in, but I do someone -- see someone that's raised a hand with the number 281914. Would you like me to --

THE COURT: All right. Well, do you recognize that number, Mr. Etkin?

MR. ETKIN: I don't. Is there an area code with respect --

THE CLERK: No, no. Those are the only numbers.

THE COURT: Well, I see someone from PG&E, a Mr. Cummings. And I see Mr. Schwartz and Mr. Canty.

Number 281914, I need to know who you are.

THE CLERK: Would you like me to allow the person to speak, Your Honor?

THE COURT: Well, let's do this. 281913, if you're Mr. Dubbs, put down your hand and then put it back up again.

THE CLERK: Mr. Canty also has his hand up. He's from the same firm.

THE COURT: Okay. Let's bring him in then.

MR. CANTY: Your Honor, this is Michael Canty from Labaton. That number is the password. I am assuming that Mr. Dubbs put that in where his name was supposed to go. That's just an assumption I'm making. So I would suggest that we let that person in to determine whether or not that is Mr. Dubbs.

THE COURT: Okay. Is he going to make the argument or are you, Mr. Canty?

MR. CANTY: He is. But I just wanted to make sure that -- that number sounded familiar and I looked at the password.

THE COURT: Okay.

MR. CANTY: And I believe that's the password for this meeting. So he might have inadvertently put that in where his name was supposed to go.

THE COURT: Well, Mr. Dubbs has appeared in this Court before, and he's a known player, so I assume he's not a Zoom bomber. If he is or --

MR. CANTY: There he is.

THE COURT: So we're all going to be embarrassed here and upset. I hear his laugh. So 281914 is Mr. Dubbs. I think

he can change that to his name if he'd like.

THE CLERK: We can take care of that now that we know.

THE COURT: Mr. Dubbs, you're apparently one of the star attractions here, so you need to turn your camera on and make your appearance.

MR. DUBBS: How's that?

THE COURT: You're going to make the appearance for the moving party, right?

MR. DUBBS: That's correct, Your Honor.

THE COURT: Okay. Well, just state your name for the record.

MR. DUBBS: My name is Thomas Dubbs from the Labaton firm on behalf of New Mexico, PERA.

THE COURT: Okay. And Mr. Dubbs, I recall your name and your appearance. How are you dividing up your forty minutes for rebuttal and primary argument? And then how are you going to share with other counsel?

MR. DUBBS: We're going to take the forty minutes. And it's going to be divided as follows: I'm going to speak for ten to fifteen minutes. Then we're going to have three institutional investors who've requested a short amount of time: Mr. Irwin Schwartz, who represents CalSTRS for five minutes, Ms. DiCicco who represents Oregon from Morgan Lewis for two minutes, and Stacy Dasaro who has just appeared for one minute who represents the MassMutual clients.

THE COURT: Okay. That's fine. Then I'll assume that the four of you will be a little passe here twenty minutes or so.

Why don't you go ahead and start your presentation?

MR. DUBBS: Thank you very much, Your Honor. May it please the Court?

First, let us thank the Court for giving us some time to explain these -- our position. I think we all believe that this is a matter that should be expeditiously handled in a fair manner. And even though we have different approaches to it, I think we share that in common.

At the outset, let me begin by saying that what I want to do in general is do a compare and contrast in my time as between the different approaches.

Before I do that, I have one comment to make, which is that I think that we've all been experiencing a bit of a natural experiment the last few weeks. And if I can quote from my colleague's briefs, which I'm sure they're familiar with, this is their first brief on this issue. Line 13, page 1, "Since PARA filed its third 7023 motion securities claimants and the reorganized debtors have settled an additional 571 claims."

The 571 in that relatively short period is indeed impressive. And I did some simple arithmetic, which I may have gotten wrong, that if you screen out the cases settled or

disposed of by virtue of omnibus motions or otherwise, in terms of real settlements, that's about sixteen percent of the total, which in a short period of time is somewhat impressive and leads to the question, since we have been told by PG&E that this process has been computerized and they're sending out offers of settlement on a regular basis, why the big sort of rush at the end.

Now there's some procedural things in terms of timing that may have led to this, but I think it's an equally compelling inference that -- and it's been made clear that one thing that PG&E does not want and does not want tremendously is a competing class action. And they don't want to compete in class action for a couple of reasons which I think are obvious but need to be stated.

Number 1, they have to share control of the whole process and they don't want to do that. And they've had from the beginning of these proceedings of very tight control of the proceedings, subject, of course, to the supervision of the Court.

The other thing that they've had is they've had secrecy, and secrecy, not in the invidious sense necessarily, but in the sense that there's no price discovery. There's no way that these people, when they get an offering, basically an email off of a computer, that they have any idea of how the offer is computed or what the baseline is that PG&E is using.

Whatever that may be, the point is that they like it that way. And it's in their economic interest to like it that way, if only because the longer that this drags on, the more tempted claimants will be, particularly fiduciaries, that they have to take something because after all, it may go away and they've waited a long time and they want to wrap it up just like everyone else wants to wrap it up?

So there are a number of reasons why they don't like the idea of a class action, putting aside whatever procedural hoops there may or may not be. And I think that's something that the Court should keep in mind.

THE COURT: Now, Mr. Dubbs, what do I -- I mean, I can't ignore that fifteen percent of the claimants have settled. Whether it's out of fear or otherwise, they're still settling consensually. What's wrong with that?

MR. DUBBS: There's nothing wrong with it. And I'm not suggesting that they did anything wrong. I'm just suggesting that the increase in speed may be due to many features. And one of the features may be that, Your Honor, and we are all here today talking about a potential class action, and they are, to put it mildly, unhappy about that.

THE COURT: No, I understand that. And I'm going to talk to you about the timeline that's in the reply brief, but I'll let you go ahead and make your preliminary --

MR. DUBBS: Fine. No, I look forward to that. And

I'll get to that in a minute.

Let's talk first about -- because there's been a lot of back and forth about opt-outs, opt-ins that that cluster of issues.

Under our scheme, no one would have to, quote, opt out until February and maybe later. So that gives --

THE COURT: Excuse me. That's what your brief says. And if I take that as given, that's obviously the shortest time you envision. So PG&E would obviously prefer later one. But that means six more months of settlements that either they might dwindle but they also might kick the fifteen percent success rate which we all agree would not be bad.

MR. DUBBS: No, we don't. We don't disagree with that at all. And that's sort of the risk that we are prepared to take because we are betting, because it's historically been accurate, they were never going to get one hundred percent of these people to settle either due to the lassitude or the People are doing other things or what have you. So there's going to be a clean-up operation at the very least at the end. And so we can offer to do that.

But that's not why we're in this. We're in this in order to represent people who do not necessarily want a process that's totally blind like this and would like some representation that offers some hope of not only protecting their rights, giving them a procedure they can put faith in,

and hopefully getting them more than what a email of off a computer will give them.

So we think that -- and the rationale which we put in our papers, which I'm sure the Court is focused on, is we believe that it's necessary for PG&E to get some handle on the opt-outs before they make their last and best and final offer so they can have some handle on the contingent liabilities from the opt-outs. Now, we can --

THE COURT: Mr. Dubbs, whether it's a computer or Mr. Slack sits there at his desk with this New York Yankees poster behind him or Chicago Cubs poster, let's assume whether it's either Slack or a computer, somebody will turn down the last offer and that'll be the end of that process. And then it'll perhaps go to a mediator, and that might get rid of a few more. But then there'll be another group. Let's assume that the RKS group, which is represented by experienced counsel and represents a huge chunk -- let's assume they don't settle and they don't want that -- they'll opt out. So what have we done for that group? They don't this procedure. And they're not likely to opt in, at least I doubt -- I mean, excuse me, they're more likely to opt out. Right? It's that all correct?

MR. DUBBS: Those assumptions are correct. And I think the answer to the implicit question is what happens to RKS and how does RKS dovetail in with what we have planned? And the answer to that is if we go on and take the next step,

which is to motion practice and preparing for trial, they would be part of that that structure. And that's been happened -- that happens in other cases with substantial opt-outs. I mean, I had the largest opt out in the WorldCom case, which is a huge bank that had a several hundred million dollar position. And they didn't allow --

THE COURT: I understand. I understand. But again, mam I correct -- correct me on this. And I don't -- I think both sides have convinced me that I have to make a decision on if I grant this procedure at all, I have to do, do we go opt-out, opt-in? And I think perhaps the more persuasive argument is opt-out.

So let's assume according to your outline the opt-out deadline is February 19th. But some hypothetical person may functionally opt out tomorrow, right?

MR. DUBBS: That's correct.

THE COURT: Okay. And based upon at least the way the briefs have been suggested, that person can't come back in. Correct?

MR. DUBBS: They can't come back in unless there's exigent circumstances which is something more than I don't like the bargain on the table.

THE COURT: No, I understand. I understand. That's right. So you and your colleagues go through this procedure. And come February or March or whatever, there is a negotiated

settlement to produce a certain recovery to the class members. And if somebody who is a member of the RKS group hasn't opted out, then that person has an option to take that settlement or opt out by the deadline. But if someone has already opted out, they can't get back in. They're excluded from the party, right?

MR. DUBBS: Well, they've excluded from the party, but they've had an invitation to the other team's party for six months. And so, you know, they know what they're doing.

THE COURT: No, that's right.

MR. DUBBS: And they're going to be -- they're going to be part of The ADR mechanism. And presumably they'll then have been through one, if not multiple mediations, before they have to opt out. Though Your Honor is quite right. You can have in effect an informal opt out before then, at which point they are sort of writing both horses.

THE COURT: Well, no, but I -- look, I like to think that regardless of what a computer does, if we get -- for any particular claimant we get to the mediation stage, it will be a real live mediator, not a computer. And that mediator will suggest an outcome. And it will be perhaps not accepted and then that's the end of it. Then I believe that claimant is in what Mr. Slack will call the pool for testing this thing on the merits, the so-called substantive objection.

MR. DUBBS: That's true.

THE COURT: Okay.

MR. DUBBS: That's true. But that's where the -- just to footnote that point, because I think it's important, that's where the schedule and in terms of Mr. Slack's scheduling of procedural motions and the schedule in terms of opting out somehow somewhat coalesce in that you're going to opt out in about the same time frame as he's going to start filing the motions and before you have to answer the motions. So you don't have -- so he can be -- Mr. Slack will probably have a pretty good idea by that time who's in and who's out.

THE COURT: That's right. And I think unless Mr. Ritholtz's 900-and-some-odd clients have a change of heart, they've made their position pretty clear. They're not going to -- they're going to be opting out again. I'm not committing. They can all change their mind. But at least at the moment, their public statement is that they are not in interested in your class approach. Right?

MR. DUBBS: That's fair. They have made it fairly clear they're sailing their own boat, their own direction.

THE COURT: Okay. So they will -- any one of them, there's hundreds of them, but they will go through the offer and encounter procedure. If that doesn't solve it, they will go through the mediation procedure. If that doesn't solve it, then they're in for the long haul for the fight.

MR. DUBBS: They're in for the long haul. And we'll

see what happens.

And just apropos of that, as Your Honor may have noticed, and it's a bit unorthodox, but we have put into towards the tail end of this process a compulsory mediation where the class or the putative class and Jeanie Mediate under the under the umbrella of one of the mediators that you've picked.

Now, we've had multiple mediators in other large cases and it tends to work. Een though some people think it's counterintuitive, it works for whatever reason.

THE COURT: But That's true. But that's true even outside of bankruptcy. I'm sure you know better than I. Most class actions end up in a mediated settlement, don't they?

MR. DUBBS: Absolutely. And my only point is that a lot of -- I take back a lot. A substantial number of them end up there with multiple mediators at that point. That's the only point I'm going to make.

THE COURT: Okay. Okay. Okay. But my point is whether it's multiple mediators or one magic mediator, a lot of them get solved around the table, not in the courtroom. And maybe some class actions go to trial, but am I correct, not a great number?

MR. DUBBS: An infinitesimal number get tried.

THE COURT: Okay. Got it. All right. Go ahead with whatever you address. I have a couple more specific questions,

but I don't want to cut into your time.

MR. DUBBS: Fine. And now I would --

THE COURT: Too much.

MR. DUBBS: Well, that's okay.

I have a couple of other compare-and-contrast that I note. And we can get into it in more detail based upon any questions the Court may have or anything else.

Mr. Slack's criticism of our structure has as one of its pillars the fact that a motion to dismiss has to be made before you can certify the class. And that's simply not true.

Now, on Mr. Slack's side of the table, it is true that current class action process often does it that way, but that doesn't -- that's not holy writ that comes down from anyone. And indeed, some of us have been doing this for a while remember when the class was done before the motions to dismiss because the clients were saying let's get the class certified, we may not like it, but if it gets certified, that's not so bad because we're going to win the motion to dismiss, and that's going to be raised to all these people, not just a few, but all of them. And that's a good thing. So there's nothing written that you have to do the motion to dismiss process before you can do the class process, number 1.

And number 2, there are -- Mr. Slack is going to raise some has raised his papers a parade of horribles about all the problems that have to go through before you can certify class.

And I'd just like to address a couple of those off the top, and we can get into the details of that if we want to or need to.

As Your Honor is aware, the class action process has as one of its key pivot points of dealing with the issue of the efficient market hypothesis and whether there's a presumption that there was reliance by the class.

THE COURT: Right, right.

MR. DUBBS: Because -- and the comeback to that is the presumption gets rebutted under a theory that has now been enshrined by the Supreme Court called price impact which is a bit of a misnomer and really is two concepts folded into one label. And one concept is basically a materiality, though it's not called that. and are the statements material. And if there's a question as to whether the material, then the recent case law presents a balancing test for the Court.

So it ends up being, as it almost always has been in common law fraud, a bench question as to whether the statement is material or is puffery or something else.

THE COURT: It sounds like a 12(b)(6) issue.

MR. DUBBS: Well, it could be a 12(b)(6) issue. And that's one of the things about it. But it comes up more frequently in the class action context.

THE COURT: Oh, I understand that. But we have an anomaly here. We have a very, very robust procedure that's been in place for three years. And you want me to depart from

it and add the second one. And I'm just trying to figure, okay, what does that do? And it seems to me that what Mr. Slack calls his sufficiency hearings, you call your price impacts, whatever you call them. And I say sounds like a 12(b)(6). Maybe I'm wrong, and I apologize to the class action --

MR. DUBBS: No. I mean, there's an overlap between the two. There's no question about it. But if it's in the class action format, it applies to everyone's. That's a res adjudicata point which may be too technical for these things. And yes, the same analysis comes up in the 12(b)(6).

THE COURT: Well, let me rephrase my question. In looking at the timeline I use, your timeline begins with -- or I'm sorry, yeah, discovery requests to you. And the next thing is experts from the debtor and so on. I don't see -- I don't see where something is briefed before the certification hearing.

So in other words, you're telling me now that the law would permit what I'm going to call this price impact motion, whether it's correctly at 12(b)(6), it's a something, it's a legal ruling that that the Court could issue before we get to the question of whether there's certification. Is that -- again, am I correct or have I got that backwards?

MR. DUBBS: No, you have it essentially correct. It's necessary a prelude to certification.

THE COURT: Okay. So with that in mind, Mr. Slack from his from his point of view, says we like to have these sufficiency hearings which, again I think is code for 12(b)(6), but I could be wrong.

So if I adopt your procedure promptly, it's still going to be several months. So we've all agreed and you've conceded that in the several months between now and looking at your timeline now and certainly before it gets to a mediator, there's plenty of time for more folks to settle without ever coming to the class table. But that the end of that process, the certificate -- excuse me, the ADR procedure will likely peter out. Some say it'll be the end if I even grant this motion. I don't know that I believe that. But at some point, it seems to me that I have to preside over a contest over the sufficiency that Mr. Slack would argue and the issues that you've identified. And they seem to be so similar that they ought to be somehow consolidated.

So if you're a -- if you're a class proponent -- or let's -- I seem to have enshrined in the culture and the lore of this case my, 10,000-dollar claimant from Peoria, and I'll use Mr. Ritholtz as representing a hedge fund who's got a five-million-dollar claim. It seems to me that whether I'm listening to the sufficiency of a five-million-dollar hedge fund claim or Joe's 10,000-dollar claim, I have to still deal with the same legal issues. Again, am I right in saying that?

MR. DUBBS: You're partly right, but you have something wrong which is that --

THE COURT: Okay.

MR. DUBBS: -- which is that price impact does bear resemblance certainly in terms of its ultimate question or ultimate answer to a 12(b)(6) motion to dismiss a claim on the basis of lack of materiality. However, there are two tests under the price impact case law. And one of them is fact-intensive and expert-intensive. So the standard that one addresses a 12(b)(6) motion which is a statement has to be such puffery that you can dismiss it out of hand forever and ever is a lot different than a statement where the question is did this statement have market impact, did this statement, the revelation of which the truth underlying it, made a stock drop of potentially hundreds of millions of dollars.

THE COURT: Okay. I understand.

MR. DUBBS: But the latter is a lot more fact-intensive than a 12(b)(6) motion that goes to, you know, is this puffery? And you know, if besides this is a great use car, it's hard to say what would really, truly be puffery in these circumstances.

THE COURT: So what you're conceding and you're correcting me politely that if we all learned in first year civil procedure that a 12(b)(6) motion takes the facts as true, we can't take the facts as true when there's a fact question

because of experts. And I concede that I wasn't clear on that or I didn't fully understand that.

But you also seem to say that I can hear the testimony of the experts and make essentially a determination of the impact and then proceed to what's -- what I'll call the more traditional 12(b)(6) analysis. Right?

MR. DUBBS: Well, yes. I think it's a practical matter in the real world. If you say there's no price impact, then in the real world, unless we all go back to the drawing board, the odds of certification diminish rapidly.

THE COURT: Okay. So if there were --

MR. DUBBS: And that --

THE COURT: If there were never a bankruptcy and you were -- and you'll have to you'll have to face this market impact issue if this matter is litigated in the District court anyway, correct?

MR. DUBBS: Yes, if we ever get to the District court,

THE COURT: Okay. Well, don't blame me for that. I got it. Mr. Dubbs, let me let your colleagues have their share of the time. And then I promise you you'll have a full time when it's your turn to respond for what's left. I'm going to stick with close to the time, but I am taking some of it away from you so I promise to give it back.

MR. DUBBS: All right. Well, why don't we go to Mr. Schwartz first?

THE COURT: Mr. Schwartz, good morning.

MR. SCHWARTZ: Good morning, Your Honor. Irwin Schwartz on behalf of CalSTRS, New York Common Access Teachers, Pension Reserves Investment Management Board of Massachusetts, and a number of Hartford entities. I would like to reserve my time and use it in a rebuttal.

THE COURT: Okay. I think have, Ms. DiCicco, you're going to speak.

MS. DICICCO: I would like to, Your Honor. Thank you.

I agree with Mr. Schwartz. My intention was to -- since I only have a couple of minutes, literally a couple of minutes, I wanted to reserve my time to the end after Your Honor has asked all your questions and the parties have all addressed the issue. So my --

THE COURT: Okay.

MS. DICICCO: If it's okay with you, I'd prefer to do that.

THE COURT: Ms. Dasaro?

MS. DASARO: Hi. Stacy Dasaro for MML Adviser.

I share the sentiments of Mr. Schwartz and Ms. DiCicco and would like to reserve my time for rebuttal.

THE COURT: I was in a BAP panel one time where everybody said they agreed their time for rebuttal and the other side said that we don't have any argument to present. And I'm guessing that got ignored. So Mr. Slack, here's the

chance to shut up the opposition, just submit.

Okay. Mr. Slack, you're up. And you're going to share some time with Mr. Ritholtz, I believe.

MR. SLACK: We're going to we're going to share thirty minutes to ten minutes, Your Honor, and I'll start first.

THE COURT: Okay.

MR. SLACK: So, Your Honor, when the Court implemented the security procedures two and a half years ago, it rejected a class-based resolution in favor of individual securities claimants prosecuting their own claims. The Court decided that the securities claimants were capable of making their own decisions, including filing claims, deciding when to settle with reorganized debtors. And that decision was right then and remains right today.

Your Honor, just two months ago, Your Honor said -- and I think it was right then, Your Honor said, I believe and still believe that for a lot of reasons, the bankruptcy claims process is preferable to the class action process. And I'd like to think that I and the debtors, over the objections of PARA and counsel, chose a procedure that was more suited to the bankruptcy world. And I still believe that's true.

And class certification right now is an even worse idea now that we know that the procedures that Your Honor put in place are working and the new amendment and objection procedures will work to resolve whatever's remaining.

And, Your Honor, just upfront, there's been a lot of discussion about Rule 23 in class certification. And I think even from the argument that Mr. Dubbs made, it's absolutely clear that the decision today is not whether to certify a class, because if the Court were to decide let's start this process in motion, there's going to need to be a process for class certification. And constitutionally that's going to be an evidentiary type of hearing. And I'm going to get to that.

And so what the parties don't really agree on is the length of time that's going to be required for this class overlay because there's no question that there's --

THE COURT: Mr. Slack, I'm on board with you. And Mr. Dubbs virtually conceded that there's probably a minimum six months, six months of the current ADR options before his proposal kicks in. But the point is, if I don't start it, it'll -- it won't start.

MR. SLACK: Yeah. Let me just say, Your Honor, it's not six months. It's going to be to do this correctly somewhere between a year and a year and a half. And I'll get to that because --

THE COURT: I understand that. I understand that you and he differ about the time frame, but my guess is, under your procedure, whether it's six months or eighteen months, it doesn't start yet. And his procedure, it starts. Okay. I got you.

MR. SLACK: It is true that it would start. And let me just say, Your Honor, I think that the two things that that are critical here, number 1, it's important to note that the procedures are absolutely working. And Mr. Cummings can put on -- I just want to -- even since Friday, if Mr. Cummings can put on the new statistics, we have -- the reorganized attorneys have now successfully resolved 5,883 claims or two-thirds of the securities claims. In over the last three months, there's been over 1,000 securities settlements. That's more than ten a day. And since Friday, since we put in our submission, there's been an additional sixty-eight claims settled and 176 claims resolved through the Court's granting of an omnibus objection.

And in addition, Your Honor, there's been fifteen mediations that have been -- that have been put in place, that have been noticed, and those cover 300 -- or more than 300 claims.

And, Your Honor, so the key is this, is that the Court has recently adopted the amendment and objection procedures. And those procedures were already sent out to every single securities claim. And these were heavily negotiated. And in addition to setting a deadline for the organized debtors to object to securities claims, they also provide a framework for resolving everything.

And let me tell you how things get resolved and why you don't need a class action here by any stretch. The plan to

resolve the remaining 2,900 claims under the procedures is straightforward. First, let's take out the 700 claims of the RKS Group because those are already collectively being done. So there are about 2,200 unresolved claims. All of them have now received offers.

Here's an important statistic, Your Honor. And this isn't a new statistic. It's been consistent, and we've told you this before. When you take out RKS, approximately ninety percent of the claimants who review their offers end up settling. That's been consistent since the very beginning of this process, Your Honor. We're getting approximately ninety percent of everybody who reviews their offers to end up settling with us.

THE COURT: We agree that -- let's just take your chart and just do a linear projection. And I don't want another chart. I'm just taking your word for the moment they're settling at ten a day. So if we go ten a day for the rest of the year, maybe that's optimistic, but there'll be a lot fewer obviously, the pure math. But there will be some little guys. My Joe from Peoria might not accept the 500-dollar offer that you made hypothetically. And he may not accept the 1,000-dollar offer that the mediator might try to twist his arm on. And then he will be stranded in Neverland unless he has some recourse to the class action.

but on the other hand, I'll say it -- I'll

acknowledge. on the other hand, Mr. Dubbs and Mr. Etkin will be out of work if we end up with such an infinitesimal number of people left that it simply doesn't make economic sense to invoke the class procedure.

So why should I strand the little guys without at least A hope that they're going to be protected under the alternative that the class suggests?

MR. SLACK: Yeah. So two things, Your Honor. There are no -- you say there are little guys. but the fact is, Your Honor, as Your Honor is recognized from the very beginning of this process, we are dealing here with no absent class members. Everybody here has filed a proof of claim, has provided information. At least most of them have provided information. And so we're not dealing here with absent class members.

And the fact is, Your Honor, there is not a single class, a single class ever certified of people who have actually filed claims, not a single one, zero. Okay?

THE COURT: I understand.

MR. SLACK: And the fact is, the reason for that is the class mechanism is designed to deal with absent class members, not class members who have already filed claims potentially with their own counsel.

And so the point, Your Honor, is, is that the procedures that we set up, the amendment procedures, actually deal with this, because what's going to happen, Your Honor, is

that we've told folks, we've already sent this out, you don't settle, that's fine. You can now amend your claim. If you don't amend your claim, you're likely to get a sufficiency objection. If you do, you're likely to get a sufficiency objection.

THE COURT: Well, I understand that. I understand that, Mr. Slack.

MR. SLACK: And so the point is, is that we're going to be filing these sufficiency objections. And we think that people who don't amend, we think we're going to win those.

THE COURT: But this the sufficiency objection what I call the 12(b)(6) motion?

MR. SLACK: It is. Exactly, Your Honor.

THE COURT: Okay. Okay. So --

MR. SLACK: That's exactly the case.

THE COURT: So again, I want to take my claimant who filed a claim -- we have a closed universe. I understand. And this is not the District Court. This is a closed universe. And I take your word for it, the finite number of claims. And I take your word for it because I thought so too. This hasn't been done before in a bankruptcy context.

But my concern here is not that Mr. Ritholtz and his sophisticated clients will need his services and can duke it out with you around a mediation or in a courtroom. It's the guy who is the little guy who doesn't have a counsel. And his

only recourse to judgment here is to fight off your motion that he's not even a lawyer to defend. And it seems to me that that remedy is an alternative that isn't such a bad thing for the little guys who might be the beneficiaries of the class procedure. So tell me what's wrong with that thinking.

MR. SLACK: Well, I think what's wrong with that thinking is that it's directly opposite what the claims process and bankruptcy does, which is -- and Your Honor has said this himself. I wish I knew you were going to say that because I would go back and quote Your Honor to yourself which is --

THE COURT: That's okay. You can do that. I believe you.

MR. SLACK: -- these folks are not -- in the bankruptcy process are not considered little guys. Everybody who files a claim is presumed to be able to deal with their claim and prosecute it. And that's the way it is. And so yes, people will have to deal with their sufficiency objections. And what they can do of course, any one of them, can hire Mr. Dubbs and Mr. Etkin or hire any other counsel and they can -- nothing is stopping them. So the point is, is that the bankruptcy process allows everybody to prosecute their own claims.

THE COURT: What would happen if I told the U.S. Trustee to appoint a securities claimant committee now? And that's --

MR. SLACK: But the --

THE COURT: Pardon me?

MR. SLACK: I'm not even sure I understand how that would work, given that you've got claimants who are clearly prosecuting their own claims, settling their own claims.

THE COURT: Wait a minute. Wait a minute. I didn't ask you -- I didn't ask you whether it was good idea. I ask you do you think it's legally a permissive idea. In other words, I took a check of the Bankruptcy Code today. And the Bankruptcy Code says that the Court can direct the appointment of a committee. And I don't know -- it doesn't seem to say, but not until confirmation. I don't know that.

But whether if we have 2,000 securities claimants -- and one of these things that we keep hearing, they can hire lawyers. If the Bankruptcy Code lets me direct the appointment of an official committee of securities fraud claimants, is that legally an option that's available? Which, by the way, Mr. Slack, might be an easy way to end run the class action. It's just have a committee at the table, I must say, paid for by your client but representing the little guys who --

MR. SLACK: Yeah, I --

THE COURT: -- who filed a claim.

MR. SLACK: I don't think it's --

THE COURT: Pardon me?

MR. SLACK: I don't think, Your Honor, that it

would -- given the success of the procedures Your Honor has put in, I don't think that it would be either appropriate or efficient to do that. And it's a little bit of a head scratcher.

And here's the thing, Your Honor. There's some idea I think Your Honor is proposing that somehow the class -- starting this class process can sit side by side with Your Honor's procedures. And there are four reasons why that just simply is not the case.

And first, Your Honor, the existence of the possibility of a 7023 class will almost certainly chill the settlement process. And there's that.

THE COURT: How do I know that? But you keep saying that. But why do I understand that's true?

MR. SLACK: Well, let me give you two pieces of information, Your Honor. And I'm happy to put in a declaration if Your Honor needs it. But we've heard from multiple claimants who have pushed off their response to our offers because of the existence of the 7023. And we received a letter from one claimant who was noticed for mediation who said they wanted to postpone the mediation specifically because of the existence of the 7023 and said specifically that they -- that if the 7023 were granted, it would alter their approach to the mediations. There is absolutely no question that the existence of the 7023 will grind this to a halt.

The second thing, Your Honor, is it relates to the confidentiality. The whole point of the procedures here was that settlements are confidential. And what that means is that fiduciaries and pension funds and the like, they can settle without the risk that there's going to be a public settlement later on that somebody's going to be able to measure their settlement against. And if we --

THE COURT: That's true -- Mr. Dubbs, come on. Don't laugh.

That's true in any settlement. Right?

MR. SLACK: But no. But it is. And so the point, Your Honor, is that here you had a specific confidential process. And again, we've heard from the pension funds and other types of fiduciaries that that they need to -- they don't want to answer even our offers while this is on the table. So the fact is, is that given the success -- and here's really the point, Your Honor. Given the success of the ADR procedures, it makes no sense to put this overlay if it in the slightest way risks derailing a process which is clearly working. The second --

THE COURT: Well, Mr. -- I have to question the following. Again, I'm sorry to always go back to my hypotheticals, but I like my hypotheticals.

So if our friend from Peoria said PG&E offered me 1,000 dollars and I don't want to settle for 1,000 dollars, so

I think I'll wait six months or Slack says eighteen months until Mr. Dubbs brings in a more favorable settlement proposal, and my first response to that guy is fine, you'll get nothing for eighteen months no matter what. But if you accept PG&E's offer, admittedly it's smaller than you want, you'll get it tomorrow. So make your choice. So that's my communication with that hypothetical guy.

And the other hypothetical guy is not hypothetical. It's Mr. Ritholtz. And Mr. Ritholtz I don't believe -- he can tell me in a moment -- that if I grant today's motion, that his clients will shut down any further discussion with you about a mediated settlement or a litigation because I just don't believe it. And if he tells me they will, I guess I'll believe him because he's not going to lie to me. But I don't think he will say that.

So anyway, go ahead with the rest of your time. And then I wanted you to share your time with Mr. Ritholtz on --

MR. SLACK: I mean, Your Honor, I don't think the issues with what RKS is going to do. And if you look at the People who are supporting the 7023, it sort of goes to the point that these, in fact, are the people who are fiduciaries who are not going to settle with us while these are in place. And so --

THE COURT: But that's their choice. That's their choice. And if my hypothetical guy says, yeah, I'll settle,

I'll take $1,000 and you say, yeah, but you can't tell anybody. And he says, fine, I won't tell anybody -- so my settling claimant won't tell anybody. So how does that impact the fiduciary obligations of all these other counsel that represent pension funds?

MR. SLACK: So here's the way --

THE COURT: they don't know what Joe settled for.

MR. SLACK: Yeah, here's the point, is that if you have a class and you ultimately have a class settlement, that's going to be public. And they're not going to be willing to settle if they're going to get -- if they're going to get criticized for they don't know. The point is, they don't know. And until they know what that class settlement is, they're not going to settle. And you're going to take a process that's working and you're going to risk grinding it to a halt. And that's not -- that's not a good thing.

THE COURT: At least three experience counsel here in this hearing have stated in record that they want the class action. One experienced counsel, RKS counsel, said, no, we don't want it. So that tells me that at least if the lawyers speak for their clients, that the RKS clients will still sit down at the table with you or at the computer with your computer and attempt to settle this case. And maybe Ms. DiCicco and Ms. Dasaro and the other counsel, maybe they will settle, maybe they won't. But at least their stated view is I

want to have the option of doing the class. I can't ignore those realities.

But go ahead and finish your presentation. And then I will shut up till Mr. Ritholtz has his chance.

MR. SLACK: Yeah, well, I've got a couple of things that are really important, Your Honor.

But what I'll say is this, Your Honor. If these folks want to hire PARE's counsel, they can. Go do it. Let's act collectively and do it. There's nothing that stops them.

But look, here's the other thing, Your Honor. There's four reasons why this is inconsistent. I've gotten to one.

The second one is the class process introduces immediate and extensive merits litigation and discovery into a process that will this is going to be messy. It's going to be intensive. And it's going to divert the attention away from settlement. And it's not an accident --

THE COURT: Okay. I understand.

MR. SLACK: Let me just say, it's not an accident, Your Honor, that the amendment and objection procedures start by saying the objectors of guidepost support the reorganized debtor's efforts to continue to resolve as many securities claims as possible through the ADR procedures. And therefore, there is no discovery, no discovery until a court decides the sufficiency objections. And that won't happen until the beginning of next year. And that's to allow this process to go

forward without extensive discovery and litigation. And what I can tell you, Your Honor, is that -- this process that they're seeking is going to be extraordinarily intensive in terms of the amount of discovery and time it's going to take. And that's the third --

THE COURT: Mr. Slack, if I had granted the original motion, you could have made the same argument and it would be true. And it's true in any class action I presume. And if the if the class action resumes in the District Court, it will happen there. So I don't know why it's different here except that you and your client are getting a lot of these things out of the way. So every one of those ten people that settled, maybe somebody settled during this hearing. And so that's a little cheaper for PG&E to worry about it. And it's one less member that Mr. Dubbs will never get to represent.

But I don't -- so what if it's expensive? Class action litigation is expensive, duh.

MR. SLACK: It's not the expense, Your Honor. What you're doing is that you're going to take a process where I think the parties, even the negotiated parties, said we're not going to have discovery or any kind of merits litigation while the procedures are going in place. And that is a fundamental part of these procedures. And what's going to happen here is exactly the opposite.

So let's talk about the schedule, because there was a

lot of discussion with Mr. Dubbs about the schedule. And that schedule just doesn't work in any stretch of the imagination. We talked about -- Your Honor talked about and Mr. Dubbs talked about the fact that class certification takes place after a sufficiency hearing -- or after a motion to dismiss. Mr. Dubbs says it's not required.

Here's what I'm going to tell you, Your Honor. It is required. And the reason that it's required after the PSRA is that what you do after the Supreme Court decisions that say this is all an evidentiary hearing is the sufficiency hearing tells you what securities and what claims survive. And until you know that, until you know that and it's on a claim-by-claim basis, until you know that you can't deal with the issue of price impact or any of the basic issues. When I say Basic issues, -- when I say Basic, Basic v. Levinson issues, because those are done on a security-by-security and claim-by-claim basis. So we cite, Your Honor, in our papers the Goldman case, which is a Supreme Court case.

THE COURT: I'm aware of it.

MR. SLACK: And what they say, what the Supreme Court has said is that the defendant has an absolute right to rebut the presumption of reliance by showing that an alleged misrepresentation did not actually affect the market price in the stock. That is not a legal issue. That is a factual issue. And, Your Honor, what we put in on page eighteen of our

supplemental submission is a series of bullets of the type of evidentiary issues that are going to come up.

In the Goldman case, for example, there were three experts by the defendants on different issues and one expert for the plaintiffs. So this is not a hypothetical issue where you're just going to say we can have two months of discovery and get this out of the way.

In fact, Your Honor, if you take a look at other cases, and I'd like Mr. Cummings to put a chart up, each of these cases is a recent case. And it shows you what is the amount of discovery, class briefing, and then time for decision in securities cases. Each one of these, the earliest -- and this has nothing to do with the class notice or sending out the class notice or letting people opt out. The shortest time frame here is eleven months.

THE COURT: Is that document in the record? Is that on the docket?

MR. SLACK: It's just reciting, just as if I were reciting this and I went to the docket, Your Honor, in oral argument. The fact is, is that this is a rebuttal to what we heard in Mr. Dubbs's -- both in his argument and in their submission. And we're happy to put this on the docket, Your Honor. But we have the citations to all of this. And it's just -- it's all public record because it's all orders.

THE COURT: No. I believe -- Mr. Slack, slow down. I

believe everything you said. I just want to know if I should try to print a copy here in my home or should I get it from the docket. That's all. Maybe I just --

MR. SLACK: We haven't put it on the docket yet Your Honor, but we can do that. The point, Your Honor, is --

THE COURT: Put it on the docket after the hearing.

MR. SLACK: We will do that, Your Honor.

THE COURT: Okay.

MR. SLACK: The point is, is that the shortest time, the shortest time is eleven months from discovery to the time of decision. And that doesn't include -- that doesn't include the notice that's going to have to go out. That's going to be hotly disputed.

And here's the other thing, Your Honor. After this period, what we think is going to happen is you're going to have an eleven-month period where you're going to have discovery certification, spend a ton of money and time and effort that's going to -- that's going to disturb the settlement process. And you're going to deny the motion for class certification. That's what we think is going to happen because when we look at these claims, these claims shouldn't be certified under the Supreme Court law.

And again, on page 18 of our submission that we gave to you, we gave you the five elements that we -- we're going to challenge each submission.

THE COURT: No. I just said that. And I understand that. But Mr. Slack, I have to assume that you're going to do the same thing perhaps in a different procedural setting without the class action procedure. In other words, to the extent that the ADR mediation process doesn't work for some, the same issues will be presented. If you're making this argument to me to stop the class action, I believe you have to -- you will make the same argument to stop the RKS claimants or any other claimant who doesn't settle. It's the same legal issue, right?

MR. SLACK: No, it's not.

THE COURT: No?

MR. SLACK: And here's why.

THE COURT: What's different?

MR. SLACK: Here's why. It's a good question, Your Honor, because the way the procedures work is you'll decide a sufficiency hearing first. That is as a matter of law. And the truth is we think we're going to win those. And so you may never get to this issue. You may never, ever get to this issue. And the truth is, Your Honor, that if you do get to the issue, it'll be after you decide the sufficiency hearing and after we then know whether there are going to be people who settle.

So look, what I would say is, Your Honor, we should go through the procedures. Let them work. This motion doesn't

have to be decided today. And quite frankly, the class certification piece is not going to be decided for eleven months. And that's at the earliest under what a bunch of cases said.

THE COURT: I want to let Mr. Ritholtz had his ten minutes, please. Thank you, Mr. Slack. I appreciate your fervor and your argument.

MR. RITHOLTZ: Thank you, Your Honor.

THE COURT: In that order. No. In reverse order.

Go ahead, Mr. Ritholtz.

MR. RITHOLTZ: Thank you, Your Honor. Jeffrey Ritholtz for the RKS claimants.

So I just want to start by addressing one point about -- because the RKS claimants have come up a lot in the discussion back and forth so far.

The RKS claimants are not a monolith in the sense that we represent both large claimants, including claimants who have over 100 million dollars in claims, and small claimants, including those who have under 10,000 in claims. So there are a number of Joes from Peoria that we represent already. So in our view, there is no reason why those other Joes from Peoria who may not have hired counsel yet can't hire us or other counsel to represent them. They're not stranded at this moment.

Secondly, we've already heard -- to address a

discussion that just occurred, we've already heard from certain of our clients that they won't engage further on the mediation notices or the offers or counteroffers that have been presented until they have clarity on the class action because they're confused as to what the process is going forward, who's going to be their counsel. Is it RKS? Is it Leviton? And they want clarity before they're willing to proceed with respect to negotiation.

THE COURT: Well, why can't you provide them clarity? If Mr. Slack is right, they won't have Dubbs and Etkin for at least a year. And they have a year with you and your advice to settle or not settle. What's wrong with that?

MR. RITHOLTZ: Well, we certainly could provide them that advice, Your Honor, but they may not -- they may still not be willing t do so if they want that --

THE COURT: That's fine. But that's their -- don't tell me that they don't have the benefit of your advice. And so it would seem to me that when you get an offer from PG&E, you will confer with each and every one of them. I will assume you confer one-on-one. You don't do a computerized thing. And you say PG&E is offered you X dollars, Joe. They'll offer you 1,000 dollars for your 10,000-dollar claim. Do you want it or not? And Joe will say yes or no. And if Joe says no, I want 5,000, then presumably you'll communicate back and Mr. Slack will tell you to stuff it. And then you'll go into the fight.

That's the way it happens.

MR. RITHOLTZ: Sure. I completely agree with that, Your Honor. But that's also an opportunity that every single claimant has. Each one has the ability to hire counsel. They've filed their claims, so they have some -- they're certainly sophisticated enough to do that. So they're sophisticated enough to hire counsel and have the very same opportunity that all of the RKS claimants have.

THE COURT: But I'm talking about your clients. And your clients were sophisticated enough to hire you in the first place. And so if your advice is take the settlement, they either accept your advice or not. And if your advice is don't take the settlement, they can agree with you or disagree. And that's the way it works. You know as well as I that's the way it works. And so if they -- if the client says thanks for your advice, I'm not going to settle with that unreasonable offer Mr. Slack gave me, then you will tell that client what comes next for that client. And what comes next is you'll be defending a sufficiency motion.

MR. RITHOLTZ: No, absolutely, Your Honor. The question is only the timing.

THE COURT: Okay.

MR. RITHOLTZ: Because we're dealing with a scenario now where the ultimate decision on class certification is going to be likely pushed out a year, if not more. And so by the --

we're going to end up with an additional overlay of a year delay when we already have procedures in place that are meant to push this -- push the claims forward. By December of this year, we're meant to have objections to all the claims and then proceed to discovery and sufficiency hearings and all of that. So just --

THE COURT: Okay. So let's assume that you've got some -- of your several hundred clients, let's assume that some of them -- and it's none of my business whether that's two or 500. Some of them are confused. Well, the other ones can still make a rational decision on whether to accept this deal or not. So it's not -- all of them are going to scrap the whole ADR process, right?

MR. RITHOLTZ: No, I'm not suggesting they're going to scrap the ADR process necessarily. But --

THE COURT: But I'm trying to find out what tale of horribles are. How do your clients -- are they impacted if I grant today's motion? And the only answer I've gotten is some of them will be confused and won't do anything for the next year because they will wait. Okay, that's the choice. But that's part of the component of deciding whether to accept an offer or not.

MR. RITHOLTZ: But there's also inevitably going to be a delay, because if we act -- for all of our clients, because yes, some might settle out, but the ones that don't, there's

going to be a year before class certification is heard. They're going to want to be heard on that potentially, as Mr. Mr. Dubbs admitted that materiality may be part of that discussion, that goes to the merits of our client's case as well. So they're going to want to be heard on that issue. So it adds additional burden and additional delay on their litigation of the case even though they're not going to necessarily classified.

THE COURT: But they might lose too and regret they didn't take the settlement.

MR. DUBBS: That's true.

THE COURT: In other words, I'll take -- one your clients says I don't like Slack's last offer, let's see them in court. So you come to court. And you call up the guy and say, we just lost the sufficiency argument, you're out of court. And the client says, God, I should have taken that settlement offer. And you say --

MR. RITHOLTZ: Well, that could --

THE COURT: -- yeah, you could have.

MR. RITHOLTZ: That can certainly happen, Your Honor. What I'm suggesting is there's two potential alternatives here. One is you have the procedures that are in place right now, the amendment and objection procedures, where there will -- there's a built in sufficiency, sufficiency objection process that will occur after December of this year. And there will be --

whoever is litigating will litigate those sufficiency objections.

If, on the other hand, there's a class action in place first, now you have an additional overlay of a class certification procedure that our clients will want to be part of. And that's inevitably going to delay and add burden to our clients to litigate their claims.

THE COURT: Okay. I got it. Do you agree with Mr. Slack's timeline or do you think Mr. Dubbs is closer to a realistic timeline?

MR. RITHOLTZ: We agree with Mr. Slack. In our experience, these types of class certification motions require significant amount of discovery, including expert discovery. And it will take at least a year, in our view, to resolve these -- to resolve the class certification motion here, which is complex.

THE COURT: No, I understand it's complex. I mean, it's complex. But I can think of a couple of things that are different about this case. 1, we have this closed universe of the number of claims. And secondly, there was a -- I think before you were active in the case, there was a negotiated determination of the -- as I recall, Mr. Slack will remember this -- I think nine critical dates where the price changed (audio interference) for the fraud, right?

MR. RITHOLTZ: Yes, Your Honor. You froze for a

second, so I didn't catch all of that.

But I would just add that that there's also -- this case has sixty-seven different securities at issue. Right?

THE COURT: I know that. I'm not convinced that that's a difference. To me, whether it's this series bond or that series bond, it's all the subject of the public disclosure or nondisclosure. We don't have to debate that. I understand that that that's a position that you and Mr. Slack believe. I'm just telling you that I'm not persuaded that that is quite as terrible as you believe.

But go ahead with anything else you wish to say.

MR. RITHOLTZ: Sure, Your Honor. So I think it's just important to recognize that we already have the procedures in place that don't have a lot of the downsides and drawbacks of the 7023 procedure and accomplish a lot of the same goals, because we have -- the amendment objection procedures don't have a class certification requirement. They don't have a notice requirement. They don't have a court approval of settlement requirement. All of those things will add time and expense to this case and will increase the role that the Court has to have in supervising this. We already have procedures in place to deal with these issues that will move things along more efficiently.

In addition, so let's take the notice here for example. That's going to need to do -- in a 7023 context,

that's going to need to do a lot of work to explain to putative class members what the requirements are for opting out, for example. Do I need an amended claim form? What's the scope of the class? Which securities are in? Which securities are out? Which omissions and misstatements are in and which are out? What if I'm a claimant who traded in some securities that are in the class but some that are out of the class? Am I a class member? Am I -- what if I opt out? Am I half opt out, half class member? There's a lot of complications here that will have to be heavily negotiated and will probably be hotly contested in terms of the notice. So that's a significant issue and a burden. And that's going to add time and expense again to resolution of these claims.

You also have in the 7023 procedure, once a class is set, even once the class settles, it could take one to two years for class members to receive their money after the settlement because there's a notice process. There's an allocation procedure that has to get resolved. Class counsel fees have to get resolved, all of which has to be supervised by the Court. And that's going to take a substantial amount of time.

Whereas in the amendment of objection procedures, as claimants continue to negotiate with the debtors, the payments -- if they settle individually, the payments get made within fourteen days.

THE COURT: All the more reason to settle. You made a very persuasive argument --

MR. RITHOLTZ: -- Well, sure, but it's --

THE COURT: -- for why not settle. Okay. I got it. I understand your point. I mean, look, you just had it in the briefs. And it helps to put some meat on the bones. And I appreciate your position on it.

I want to I want to hear from the other side now and particularly the other opponents of your side. So thank you, Mr. Ritholtz.

MR. RITHOLTZ: Okay.

THE COURT: Appreciate it.

MR. RITHOLTZ: Understood. Thank you, Your Honor.

THE COURT: Okay.

So Mr. Dubbs, you have given up some time to the other three counsel. So let's go in the order that I talk to them. So Ms. DiCicco and then -- well, we lost somebody I think, and then Ms. Dasaro. Oh, Mr. Schwartz, excuse me. Okay.

MR. SCHWARTZ: Your Honor, if you want me to start.

THE COURT: I'm sorry. You're right. You're right. You're right. Mr. Schwartz. I am keeping track of my scorecard here, and I turned the page and I forgot you. You're up, Mr. Schwartz.

MR. SCHWARTZ: Thank you, Your Honor. And I will try to be brief hopefully --

THE COURT: NO, take your time.

MR. SCHWARTZ: -- with my time.

I think, Your Honor, the most important question I wanted to answer that I expect Your Honor is thinking is why would our clients, who are some of the biggest public pension funds in the country, want to have a class action process? Because unlike the 10,000-dollar claimant in Peoria, obviously our clients are sophisticated and they have at least thus far hired us to deal with this issue.

And the answer, Your Honor, is because they are fiduciaries, their mandate is to try to maximize return, minimize costs with an acceptable margin of risk. That's across all assets in the fund. And what that means in the context of a case like this is that the costs associated with having to prosecute their claims on an individual basis make you question the prudence of continuing the case or at least not settling cheap.

I can tell Your Honor that based on the offers our clients have received, that I'm not going to say anything Mr. Slack said, our clients will never settle. Yet it is required that they release the claims in the case in the PRSA. That means --

THE COURT: I misunderstood what you said.

MR. SCHWARTZ: Yeah. I'll say it again. I apologize. You cannot expect that our clients will accept the settlement

offer if, in fact, it's conditioned upon releasing of claims outside the state. And therefore, you can expect that our clients will have to find a way to go through the procedures that are currently being articulated although they are extraordinarily burdensome.

And I would remind Your Honor your comment at the end of a hearing in June where you said recognize that the claimants, security claimants, have already incurred significant burdens in preparing the forms and hiring me or the others.

Let's just walk through what happens if the vaunted ADR procedures don't work. Right? There is this so-called sufficiency objection which I expect will be fifty pages of legal briefing about why none of the claims in this case survived. That's going to require us to respond to that. There will be a reply to that. And I don't think Your Honor will grant all of the theories. And so something will survive. And then you get into discovery. And then you get into summary judgment motions. And then you get into trial most likely. And not only is that for us, but that is for all of -- could be thousand-plus claimants who are not willing to forfeit their claims on the minimalistic offers that have been made so far.

And I will tell you, Your Honor, that the letter Mr. Slack quoted was from me. And what I said in that letter was we are not prepared to mediate until we understand what the

court's going to rule on the 723, and then we're going to be delighted to mediate and we're going to be delighted to try to settle this case regardless of the 723.

The difference, Your Honor, and you probably already perceived this, is if we have the safety net of a class action that's being run by Mr. Dubbs and his team who are quite competent, then if a lowball offer is made us, we are confident we can say we're not interested, we're going to stay in the class. If, on the other hand, a very rich offer is made, then my clients and I -- I can tell you CalSTRS because that letter was from CalSTRS -- is delighted to mediate, is delighted to show up in person and negotiate directly with PG&E f they're willing to do that. But it is not exclusive one to the other.

Your Honor, I don't want to belabor this much more, but I would suggest that the economics is what's really driving PG&E's position. It's what's driving ARK's position.

THE COURT: I mean, I saw Jerry Malone a long time -- or Jerry Maguire. I know it's called show me the money. But Mr. Schwartz, are you saying that if I grant the motion, that PG&E will increase the settlement offer?

MR. SCHWARTZ: I would if I were them. I would if I were them.

THE COURT: So would I actually.

MR. SCHWARTZ: But then it may be enough or it may not be enough. But the point is that the -- and I don't mean to

quote Jerry Malone. That wasn't where I was going, Your Honor. But the point is that when you have a case, whether it's these 3,200 claimants or it's hundreds of thousand, the reason that the collective redress is so important is because it allows a mechanism to get a judicial relief for a broad spectrum, your Peoria people, our people. And it is an efficient mechanism. It helps the Court avoid hundreds, if not thousands, of separately litigated claims that by themselves are unduly burdensome on the claimants that have to try to process.

So I would recommend to Your Honor, you're probably already aware of it, but the American Reserve case that we cited, which is Judge Easterbrook out of the Seventh Circuit, has a very thoughtful analysis of why class actions are appropriate for cases in this nature. It's also been cited with approval in the Mortgage Realty Trust case which --

THE COURT: But neither of those cases came out of bankruptcy yet, right? I mean --

MR. SCHWARTZ: Yes, they both did.

THE COURT: Well, but did they come after two years of an attempt that you've been living with for two years. In other words --

MR. SCHWARTZ: No.

THE COURT: -- I thought I put out in my question somebody tell me if this has ever been dealt with in any known bankruptcy case before. And I thought the answer was across

the board, no, it hasn't been. I mean, I understand your point, but your point -- the point that you made is you wanted judicial involvement for relief in an efficient manner. But it doesn't sound very efficient. But frankly, neither does the other one. Neither does having whatever number of claims survive the mediation process and that become the sufficiency motions. That sounds a little overwhelming also. So the appeal from my point of view is to come up with an alternative.

But again, that's for me to decide. And I appreciate your explanation. Okay. Let me hear --

MR. SCHWARTZ: May I touch on --

THE COURT: Go ahead.

MR. SCHWARTZ: -- one more thing, Your Honor?

THE COURT: One more thing? Yes.

MR. SCHWARTZ: There have been some issues raised about the conflict of interest and questions of that nature. I can share with you that, Your Honor, we don't believe that to be a significant issue. And I can tell you for two reasons why. 1, and this comes out of -- resolution of the equity claims are supposed to be paid in equity. And the resolution of the PSLRA claims must be paid in dollars. So I don't see that as a potential conflict.

But on top of that, we know -- New Mexico PARA, we know Greg Trujillo, who is the executive director there, an ethical hard-working fund that is going to do the right thing

for themselves and for their peer funds like us. So on that basis, we'd ask, Your Honor allow the 723.

THE COURT: Okay. Thank you. All right. Ms. DiCicco?

MS. DICICCO: Thank you, Your Honor.

I will just second everything Mr. Schwartz said in terms of the merits of the process that we're talking about in terms of the Rule 7023 motion. But I have a few other points I just want to add as an aside.

My client did not take the position, as Mr. Slack suggested even suggest my client did but suggested that some claimants did, that they would not negotiate or proceed with the ADR procedures while this motion was pending or even if it had been granted. And our position is -- my client's position is that it is prepared to have been -- in fact, we have a mediation scheduled -- I know that you had asked for how many were scheduled. I don't think the debtors provided that. But we actually do have a mediation scheduled, and we're prepared to go forward with the mediation. I can't tell you I'm terribly hopeful, but we're going to go to it in good faith and try to see what we can get accomplished.

But again, the idea is, if that doesn't -- the mediation does not work and we wind up in the bucket of unresolved claimants, which we suspect we may be because we got an offer at your urging in February and we are still not far

from where we were in February, then we need this -- we need this other path. And we think this other path via the class process is the most efficient way to get not just our claim but all the claims resolved for all the reasons the parties have noted and Mr. Schwartz has noted.

One thing -- although the rate of recent settlements that the debtors have pointed out may be impressive, particularly for the last quarter, the fact that so many have settled when the 7023 motion is pending sort of belies Mr. Slack's argument that the fact that the motion is pending is going to stop people from negotiating. They have actually settled. The settlements are happening. And now, thankfully, finally in late 2023, all claimants have received offers. And we expect that to continue.

And whether -- and we have through the end of the year, right? From August -- it's now August 23rd. And from August 23rd even just through December 31st, we're going to be in the same process no matter what. In other words, this process can continue unabated for the little guys, the big guys, and everybody in between. And the settlements can continue to go forward. And if the pace continues, then more claims will be resolved. And that's a good thing. Nobody has a problem with that. And that's going to be regardless of what process we have in place, because under the -- under the amended procedures, nothing's going to happen before December

13th. And then we're going to negotiate a briefing schedule. We're going to have a motion -- the sufficiency objection. And that's going to go on for several months through next year anyway.

So either way, if there's not a settlement, for example, if my client doesn't mediate to a settlement, we're looking at at least a year away anyway because some portion of this process is going to go forward. And we're fine with that.

If the process went only as is with just the procedures, even if the debtors were able to achieve the pace that they've had in the last quarter, they would need another year to whittle those claims down. And that assumes that all of the claims could be resolved, which we know just from the number of joiners that's highly unlikely. So I think we all agree that having another year of just trying to resolve claims through this process is not the right way to go. So we appreciate Your Honor's focus on having an alternative to accomplish that.

And unless you have any questions for me, I think that's -- I'll pause there.

THE COURT: No. I appreciate your argument on that and the issues you raised.

Ms. Dasaro?

MS. DASARO: Good afternoon, Your Honor. I echo the sentiments once again of Mr. Schwartz, Mr. DiCicco, and I'll

just keep my remarks brief.

MassMutual is just slightly farther behind in the process. We only received our initial settlement offer on August 15th, so there's no way we could be set up for mediation at this juncture. We have until September 18th to respond, although as we set forth in our supplemental joinder, the MassMutual funds are likewise willing to and want to try to mediate and/or resolve these claims in advance of costly litigation. But again, in the absence of that, for all the reasons stated by my colleagues, we respectfully submit that the 723 process would be the most efficient and cost effective.

And I'll add that MassMutual, much like my colleagues, probably has spent quite a great deal of funds to still be very much in the beginning of a process three years, three years after we filed the claims. And would look forward to the 7023 as a backup. And with that, I would request Your Honor, approve the motion.

THE COURT: Okay. Thank you.

Mr. Dubbs, you're going to be the closer here. And let me just switch positions. One second.

Okay. I think you have about fifteen minutes under our discussion before.

MR. DUBBS: Thank you, Your Honor. Well, we've heard a lot, and a lot of it is wrong. But the one thing that is important and transcends the back-and-forth among the parties

is there's a factor here that is, I would say, almost unique in securities litigation, be it in Bankruptcy Court, District Court or wherever. And that's you have some of the major financial institutions in the United States coming here saying they want a class action. And just as a matter of politics, Most of these institutions are not the wildest fans of class actions. And a lot of them like to go on their own. And when they don't think they can go on their own, and they obviously here don't and they're not so enamored by the process as laid out by Mr. Slack and his colleagues, they look for another process. And so they have gone with the class action with people they know, that's true, in order to get themselves a backup.

Now it's a backup as they said. And the idea that CalSTRS is not going to negotiate with someone if they get the right number is frivolous. That the procedure itself and the existence of a class procedure is going to somehow chill all these sophisticated people, that's ridiculous. And if they're going to be confused, be unconfused by all your lawyers. And we'll send them an information thing, which I think we should just so that there's -- nobody can down the road say that they didn't know what was going on because they should know what's going on.

So you have a bunch of institutions who basically said -- and some of the largest financial institutions in the

United States that they will negotiate with these people. They're not saying they're going to walk away. And the one caveat, which important as it is, and it's come up in a prior hearing and I think -- I was looking at the transcript, it's a bit muddled, is what happens in the relationship between the bankruptcy case against PG&E and the District Court case, against the officers and directors and the underwriters.

And to be clear, PG&E EA has demanded before they give you a penny, you must have a release of all your claims in the District Court against the Ds and Os and their large insurance policy and against the underwriters. That's a quid pro quo of pulling in those people into this problem which should not be . It should be separate. But you should know that because that's part of the whole deal. And there's some people who are reacting very negatively to that in part because it's overreaching, in part the numbers aren't right. So it's both things.

A few technical points. As to the length of this, since Mr. Slack has put a lot of things in the record, which is fine, I would like to submit after this, and I'll just put it in the record without any rhetoric, a pre-trial order dealing with discovery of all issues, both class issues and merits issues, where the whole class is done in a year or less than my firm was involved in Issued by Judge Rakoff in the Southern District in the World Wrestling case. So it can -- depending

upon the judge, surprise, surprise. It can depend upon a lot of things. And it can depend upon how long it takes.

Now, as to some of the other issues. Mr. Slack is saying that the PSLA requires that a 12(b)(6) motion be decided before class issues. I want him to send me a case because it's not true.

Likewise, the idea that all these different securities, and there are potentially a lot of securities in play, are going to have to be litigated one by one under Goldman, nonsense. It's not there. It's not in the opinion. I defy him to send me something that says it is. I spent nine years on the case. I think I know what's there and that ain't there.

What is there and the heart of it is, or one of the hearts of it, is that the Court has to examine drop. And indeed, if there was a message from the Supreme Court, it's that you've got to focus intently on the drops, what happened at the same time as the drops, what can be inferred or not inferred from what people were saying about the drops. So it's drop by drop, not stock by stock. So you find what the drops are. The jury or the trier of fact finds out whether those drops are actionable and what the percentage decline is that's attributable to the fraud. And from those findings, everything else can be deduced. And there are no other issues that have to be decided by the Court. And the rest of it is done by

claims administrators with yes, computers, thank goodness.

So there has been a lot of misstatements about what the world is like and how complicated this stuff is or is not. And we're not saying it's simple. Let's be clear. But we're not saying it's the burdensome thing that they say it is and that all the parade of horribles that you've heard today and the insinuation that all of these huge pension funds are just going to say we have to wait for the class action when they're presented as fiduciaries with a compensation number that fits what they think it's worth after discussion and what after a mediator decides to bless it.

If there are any further questions, I'll be happy to answer them. Thank you so much for your time.

THE COURT: No. I have no questions. I want to thank all counsel for --

MR. SLACK: Your Honor, can I just take a couple of minutes? I mean, there are a lot of new stuff there. And I can respond to it very quickly. But if you give me a couple of minutes.

MS. DICICCO: Before you do -- actually, Your Honor, may I just say one timing issue that I'd like to address in light of what you were saying about --

THE COURT: Ms. DiCicco one minute, Slack three minutes. Okay. Go, Ms. DiCicco.

MS. DICICCO: Thank you. Thank you. I'll be very

quick.

On the timing question, we do have under the current procedures a deadline in October for the unresolved claimants to amend their complaint. So the process we have is both that we're going forward with the procedures in terms of the mediation. But if the mediation fails, we then have to go through this other process with that October deadline. That October deadline is important because the parties will have to incur the expense of developing their claims and amending their complaint and their claim to be able to put forth which Mr. Slack would then object to in December.

So from a timing perspective on this motion, it's important for the parties to know where the Court ends up on this 7023 motion in time for us to then prepare or not prepare to do that amendment, because I think if we were -- although we go forward to mediation, we may not want to incur the expense if we're then going to be joining into the class to have to amend the claim. So I'm just -- from a time -- I just want to emphasize that timing distinction between the mediation and the amending of the claim and the cost imposed on the result.

THE COURT: Is just a polite way of saying would I make sure I rule?

MS. DICICCO: Yes, Your Honor, it is. To be frank, it is because it does matter for us the timing because I think otherwise I don't want --

THE COURT: What if I do it --

MS. DICICCO: -- Your Honor to think that we have to --

THE COURT: -- at the conclusion -- what if I do it at the conclusion of the hearing?

MS. DICICCO: That would be fabulous. Yes, we'd like that.

THE COURT: Really?

Mr. Slack, you have three minutes.

MR. SLACK: So a couple of things, Your Honor. The first thing is, is that Mr. Dubbs says at the very end, let's take that first, that securities don't matter, the drops matter. But of course, but drops only happen on a security-by-security basis. What happens with an equity security? And that drop is different than what happens with every other security. So what you need to look at, Your Honor, because you have all these debt securities, is what happens to each of those securities which are different. They're all -- they all have different -- a debt security has different payment obligations at different timing. And the fact is, is that you're not going to look at an equity drop to decide what is what with a -- with a debt security.

And so Mr. Dubbs is just flat-out wrong and he can't show you a case that's going to say that that securities don't matter when you're dealing with this. They do matter. And

that's just a matter of fact. The second thing, Your Honor --

THE COURT: But wouldn't the expert addressed that.

MR. SLACK: Sure. But here's -- well, here's the point, Your Honor, is that if you don't decide the sufficiency hearing and the motion to dismiss first, that expert is going to have to go through each of those sixty-seven securities. What's likely to happen if you do a sufficiency hearing, and that's why the PSRA requires it first, is that Your Honor is going to go and either dismiss the claims as a whole or, if anything's left, it narrows what you have to do in class certification. And that's why there's a staging.

And Mr. Dubbs says it's not required. He can't show you a single case in recent memory since the PSRA where that's happened, not one, because it just doesn't happen the way he wants you to do it.

Now, Your Honor, the other thing is that everybody's talking about it's taken a long time and we're in a long time. Things are working right now, but that long time, it's really ironic. And sitting here and listening to this -- because you'll remember, Your Honor, you gave me a little bit of a hard time. Some of the claimants have certainly given me a hard time on the fact that we spent a year negotiating with PARA. It's actually the delay that PARA caused by negotiating for a year that's taken this time. And so it's really ironic, Your Honor, that the same people who are complaining about delay and

the timing are now supporting hey, we put PARA in there, this is all going to be better when we've negotiated with them for a year.

So the last thing I want to say, Your Honor, in my short time is I think there's a better solution in the following respect. I think what should happen, Your Honor, is you let the procedures play out. And if you decide the sufficiency hearing and those issues get narrowed for class cert, this Court can always revisit a class certification issue at that time. And we'll know information. We'll know, number 1, how many claims are remaining. We'll know what proofs of claim are remaining, and I don't think there's going to be that many.

And the third thing, Your Honor, is I don't think it's going to delay the process a great deal, because the advantage we have is once you decide whether these claims even survive and certainly narrow down both the misrepresentations and the number of securities, that's going to lessen the amount of discovery that's required. And so that is the most efficient way because it doesn't disturb the procedures. It lets those go forward. And then and it -- and then after you've decided the motions to dismiss and have the sufficiency hearing, you can revisit this issue. And I don't think there'll be a tremendous amount of delay because of the advantages you get when you decide that motion first.

Anyhow, thank you, Your Honor.

THE COURT: Now, Mr. Slack, if it's January and I've deferred or denied the motion for class action without prejudice to renewing it and I deny your -- whether we call it a motion to dismiss or deny your position on the sufficiency hearing, then what? Then when Mr. Dubbs and Mr. Etkin make their fourth class motion, you come in swinging and tell me it's fine but it's going to take another eighteen months?

MR. SLACK: Well, here's what I'm going to tell Your Honor, is certainly that is a possibility. But I think it's a small possibility. I think what's more likely, Your Honor, is that you're going to find that the procedures have worked. You're also going to find that, again, more likely that even if Your Honor doesn't grant the motions to dismiss in whole, that you grant them in part and narrow. So it's very rare that what you're going to find is that that is that we haven't settled a lot of these and that you're going to make you're not going to narrow this at the very least or dismiss it as a whole.

THE COURT: Okay. The point is some -- again, I didn't fault and you didn't complain if any of the lawyers on the other side made any reference to terms that have been negotiated -- have been part of the mediation process. But my point is that there's reason to believe that, although the ADR procedures do appear to be making progress, that there are going to be some that just aren't going to get settled in the

near term. So I believe that what Ms. DiCicco described as likely that has to happen late at the end of the year might happen. And then it seems to me we're back to the question of I denied the first motion for class because it was way too late in the process and about AB1540 was looming and for all the other reasons. But I divide the second one because we -- for a variety of reasons.

But then a long time went by. And I don't want to hear who caused the delay. There was a delay. This is no-fault judge here today. I don't want this criticism of perilous lawyers about they caused the delay because they're not complaining that you didn't -- you caused the delay because you didn't accept their offer. It's just a delay.

And so the question is, if I take serious -- I take all the arguments seriously. But if I am persuaded by the lawyers this morning who make the pitch for the alternate, well, then it's such a great alternative that it's going to be delayed by several more months.

And that's not very conducive to a case that I, by the way, join a number of people that take a great deal of pleasure in realizing how, despite all odds, so much has gone out the door to the fire victims. But nothing has nothing has gone out the door to the fraud victims except the ones who compromised. And that's okay if they all compromise. But if they don't compromise, I personally regret the thought that people who

have a legitimate claim for being defrauded in 2015 in 2023 are still listening to an argument that says you might get something that you can be satisfied with in eighteen months.

So I just want to say -- I don't want any more argument. I want you just to be mindful of the fact that that weighs heavily on my shoulders in terms of something that I want to facilitate rather than slow down.

So Ms. DiCicco,I am not going to take this matter under advisement for three months. I'm not going to rule this morning. I probably will make a ruling very quickly, just an oral ruling, and just set of hearing. I don't -- obviously, I need to reflect on everything we've talked about today and go back and look some more again. But you've all briefed it so thoroughly. And it sounds like it's an easy choice. All I have to do is say granted or denied. But I take it a little more seriously about that. And I intend to do that fairly promptly.

And if I deny it, I guess it's a -- it's easy. If I grant it, then the question is what comes next. And I promise you all that I have not made up my mind. I have not made up my mind at the start of the hearing. I haven't made up my mind after the hearing. But I'm not going to sit on this thing for more than a very short period of time.

So thank you all for your time and effort. And (audio interference) conclude the hearing.

IN UNISON: Thank you, Your Honor.

THE COURT: All right. Bye, everybody.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ MICHAEL DRAKE, CER-513, CET-513

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Date: August 25, 2023

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